
(1978) 05 AHC CK 0100

In the Allahabad High Court

Case No : Income-tax Reference No. 306 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Om Sons

RESPONDENT

Date of Decision : 19-05-1978

Acts Referred:

Income Tax Act, 1961 — Section 274, 274(2)

Citation : (1979) 116 ITR 215

Hon'ble Judges : Satish Chandra, C.J.;C.S.P. Singh, J

Bench : Division Bench

Advocate : Ashok Gupta, for the Appellant; Bharatji Agarwal, for the Respondent

Final Decision : Disposed Of

Judgement

C.S.P. Singh, J.—At the instance of the Commissioner of Income Tax, the Tribunal has referred the following question for our opinion:

"Whether, on the facts and in the circumstances of the case, was the Tribunal right in holding that, the Inspecting Assistant Commissioner of Income Tax had no jurisdiction to pass order of penalty in respect of the assessment year 1969-70?"

2. The assessee carries on retail business at Delhi in woollen goods. For the assessment year 1969-70, it filed a return showing a loss of Rs. 28,170. The assessment was, however, computed on a total income of Rs. 27,860. On appeal, the total income computed by the ITO was sustained and a loss of Rs. 14,313 was determined by the AAC. While computing the assessment, the ITO initiated proceedings u/s 271(1)(c) of the I.T. Act, and referred the matter to the IAC u/s 274 of the Act. The IAC held that the provisions of Section 271(1)(c) were attracted, and imposed a penalty of Rs. 15,000 by his order dated November 29, 1971. An appeal was preferred by the assessee before the Tribunal. The Tribunal held that as Section 274(2) of the I.T. Act had been amended, with effect from April 1, 1971, by the Taxation Laws (Amendment) Act of 1970, the IAC did not

have jurisdiction to impose penalty. It is not disputed that at the time when the reference was made by the ITO to the IAC, it was valid under the law as it then stood. The amending Act which has been referred to earlier, amended Section 274(2) and in its place substituted the following :

"274. (2) Notwithstanding any thing contained in Clause (iii) of Sub-section (1) of Section 271, if in a case falling under Clause (c) of that Sub-section, the amount of income (as determined by the Income Tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees, the Income Tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty."

3. As a result of this amendment, such cases where the concealment or inaccurate particulars furnished exceeded Rs. 25,000 had to be referred to the IAC. Cases where concealment of the amount is less than this figure had to be dealt with by the ITO, There is divergence of opinion between the High Courts as to whether in cases like the present, the ITO or the IAC has jurisdiction to impose penalty. The Orissa High Court in *Commissioner of Income Tax Vs. Dhadi Sahu*, and in the case of *RADHESHYAM AGARWALLA Vs. COMMISSIONER OF Income Tax, ORISSA, AND OTHERS.*, has held that the Amendment Act took away the jurisdiction of the IAC as from April 1, 1971, in respect of cases where the amount involved was less than Rs. 25,000. The Gujarat High Court in the case of *CIT v. Royal Motor Car Co.* [1977] 307 ITR 753 and in the case of *Commissioner of Income Tax, Gujarat Vs. R. Ochhavlal and Co.*, , has taken the view that the amendment did not affect the jurisdiction of the IAC to complete penalty proceedings, where a valid reference had been made to him by the ITO. The Andhra Pradesh High Court in the case of *The Additional Commissioner of Income Tax, Andhra Pradesh, Hyderabad Vs. Watan Mechanical and Turning Works, Hyderabad*, , held that the enlarged period of limitation contained in the amendment to Section 275 of the Act with effect from April 1, 1971, applied to cases of penalty where the time for imposing the penalty had not expired. The view was based on the principle that no party had a vested right in procedure and limitation. The Madras High Court in the case of *Continental Commercial Corporation Vs. Income Tax Officer and Another*, has taken the view that the amendment to Section 274(2) did not apply to cases where the return was filed before the amendment came into force, i.e., it was not retrospective. This view is based on the principle that the relevant law applicable to cases of infringement of a statute or an offence is the law prevailing on the day when the lapse took place. We, however, think that it is not necessary to examine the correctness of the principles applied by the other High Court for placing a particular interpretation on the amendment of Section 274(2) for this court is committed to the view that a court or Tribunal deciding a matter must not only be possessed of jurisdiction initially, but also be clothed with the power to decide the matter when the final order is passed. In *Bhikham Vs. Natha*, , a suit u/s 180 of the U.P.

Tenancy Act was instituted in the civil court. At the time when the suit was instituted the civil court had jurisdiction to decide the matter. Subsequently, by an amendment the jurisdiction of the civil court was taken away. It was held that as the civil court had lost the jurisdiction to decide the suit, it could not proceed with the trial.

4. The question regarding the continuance of jurisdiction at the time of decision was exhaustively considered by a Full Bench of this court in the case of Kallu Khan v. Kamrul Nisa [1962] ALJ 1039 . In that case, suits under the U.P.Z.A. & L.R. Act for declaration of sirdari rights were filed, and at the time they were filed the civil court had exclusive jurisdiction to decide them. While the suits were pending, Section 332B was introduced by way of amendment by U.P. Act 18 of 1956. According to the modified provisions, the issue regarding sirdari rights had to be referred to revenue courts, as this amendment took away the jurisdiction of the civil court to decide the question of sirdari right. Subsequently, Act 37 of 1958 deleted Section 332B, with the result that the necessity for making a reference ceased to exist. Further, while the suits were pending revenue courts were clothed with exclusive jurisdiction regarding sirdari rights, while the civil courts had jurisdiction in respect of other classes of tenure. The civil court decided the matter without referring the issue of sirdari rights u/s 332B. It was held that in view of the amending Act 18 of 1966, it was necessary for the civil court to refer the issue of sirdari right to the Collector, but if no such issue had been referred before the 7th November, 1958, on which date the provision for reference u/s 332B was deleted by Act 37 of 1958, the issue could not be sent to the Collector for decision. It was further held that the jurisdiction of the court for deciding sirdari rights was governed by the law applicable on the date of the decision of the suit and not by the one in force on the date of its institution. Our attention was drawn to another Full Bench case Fida Hussain Vs. Imamat Husain and Others, , for the contention that as the IAC was initially seized of the jurisdiction to decide the proceedings, the amendment of 1971 did not deprive him of that power. This case does not support the contention. In that case, a suit had been filed in 1953 in the court of the Munsif, Allahabad, for declaration of sirdari rights. The suit was decreed in 1963. At the time when the suit was filed the civil court had jurisdiction to entertain and decide the suit. By the amending Act 18 of 1956, Section 331 of the Z.A. & L.R. Act, which set out the forum for filing suits, was amended and the jurisdiction of civil court was taken away. The amending Act, however, contained a saving clause, for, by Section 23, it provided that pending suits would continue to be tried by the court in which they were instituted. But as in the present case there is no saving clause this decision of the Full Bench will not apply. In our view, the Full Bench decision of this court in Kallu Khan v. Kamrul Nisa [1962] ALJ 1039 settles the controversy. Thus, as on the date when the IAC passed the final order, his jurisdiction to do so had been taken away by the amendment in Section 274(2) of the Act, the order passed by him was thus without jurisdiction.

5. We, accordingly, answer the question referred in the affirmative, in favour of

the assessee and against the department. The assessee is entitled to its costs which are assessed at Rs. 200.